

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICKY S. WAHCHUMWAH (1) and
VICTORIA M. JIM (2),

Defendants.

NO. CR-09-2035-EFS-1

NO. CR-09-2035-EFS-2

**ORDER MEMORIALIZING ORAL
RULINGS DISMISSING MBTA
CHARGES AND DENYING AS MOOT
DISCOVERY MOTIONS**

A hearing occurred in this matter on August 12, 2009, in Yakima, Washington. Defendants Ricky S. Wahchumwah and Victoria M. Jim were present and represented by J. Adam Moore and Thomas Zeilman, respectively. Assistant United States Attorney Timothy Ohms appeared on the Government's behalf. Before the Court were Defendant Jim's Motion to Dismiss Count 1 Under the Migratory Bird Treaty Act (Ct. Rec. [115](#)) and Defendant Wahchumwah's Motion to Dismiss All Charges Alleged Under the Migratory Bird Treaty Act (Ct. Rec. [103](#)), Motion for Bill of Particulars (Ct. Rec. [112](#)), and Request for Expert Reports Pursuant to FRCP 16(F) and (G) (Ct. Rec. [113](#)). After reviewing the submitted material and hearing from counsel, the Court was fully informed. This Order supplements and memorializes the Court's oral rulings.

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1 **A. Defendants' Motions to Dismiss**

2 Defendants contend that they are not subject to the Migratory Bird
3 Treaty Act (MBTA), 16 U.S.C. §§ 703 and 707, and therefore those portions
4 of Count 1 and the forfeiture counts are to be dismissed. For the
5 reasons set forth in the Court's August 13, 2009 Order in CR-09-2034 (Ct.
6 Rec. [107](#)), the Court grants Defendants' motions, finding that the MBTA
7 does not apply to Defendants because it did not abrogate the Yakama
8 Indians' tribal rights to hunt migratory birds. Yet, as the Court noted
9 in the Order, Yakama Indians do not have a tribal right to hunt eagles
10 for non-religious commercial purposes because eagles are a religious
11 symbol and therefore are to be used only for religious purposes. In
12 summary, the MBTA-dependent portions of Count 1 and the forfeiture counts
13 are dismissed.

14 **B. Defendant Wahchumwah's Discovery Motions**

15 Defendant Wahchumwah advised the Court that both of his discovery
16 motions were moot. The motion for bill of particulars is moot because
17 the Court dismissed the MBTA charges, and the motion for expert reports
18 is moot because the Government agreed to produce the reports no later
19 than August 26, 2009.

20 **C. Conclusion**

21 Accordingly, **IT IS HEREBY ORDERED:**

22 1. Defendant Wahchumwah's Motion to Dismiss All Charges Alleged
23 Under the Migratory Bird Treaty Act (Ct. Rec. [103](#)) and Defendant Jim's
24 Motion to Dismiss Count 1 Under the Migratory Bird Treaty Act (Ct. Rec.
25 [115](#)) are **GRANTED**.

26 2. Defendant Wahchumwah's Motion for Bill of Particulars (Ct. Rec.
[112](#)) is **DENIED AS MOOT**.

